

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT**

**UNITED STATES OF AMERICA**

**v.**

**JAY LAVESON,  
Defendant**

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**File No. 1:03-CR-94-01**

**ORDER**

On April 27, 2005, the United States Court of Appeals for the Second Circuit issued its mandate (filed in this Court on July 19, 2005) (Paper 31), remanding the case for further proceedings in conformity with United States v. Crosby, 397 F. 3d 103 (2d Cir. 2005). A Crosby remand is for the limited purpose of permitting the sentencing judge to determine whether he would have imposed a different sentence had the Guidelines been advisory, and if so, to resentence. Crosby, 397 F.3d at 117. As Crosby instructs, after the United States Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), a sentencing judge "remain[s] under a duty with respect to the Guidelines – not the previously imposed duty to apply the Guidelines, but the continuing duty to 'consider' them, along with the other factors listed in [Title 18 U.S.C.] section 3553(a)." Crosby, 397 F. 3d at 111.

The Court invited counsel for both parties to submit memoranda addressing any Crosby issues. (Paper 33.) The defendant filed a Motion for Resentencing, waiving his right to a hearing, and subsequently filed a Notice Withdrawing Motion for Resentencing, and an unnotarized affidavit wherein he waives his "rights to reconsideration and appeal." (Papers 34, 38 and 40.) The government filed its

Response to Motion for Resentencing wherein it requested a hearing be held and the original sentence reimposed. (Doc. 35.)

The Court has taken the opportunity to review the Presentence Report, the Sentencing Memoranda, the Court's Statement of Reasons and the post-mandate filings of the parties. It has also reviewed the § 3553 factors, and concludes defendant's sentence would have been the same as originally imposed.

Accordingly, resentencing is DENIED.

Dated at Brattleboro, in the District of Vermont, this 27<sup>th</sup> day of March, 2006.

/s/ J. Garvan Murtha

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J. Garvan Murtha  
United States District Judge